



PRIMARY AGGRESSOR LAWS IN CONNECTICUT AND NEIGHBORING STATES

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DOMESTIC VIOLENCE ARREST LAWS

States' domestic violence arrest laws generally take one of three approaches. They:

- require police to arrest perpetrators (mandatory arrest) (Connecticut, Maine, New Jersey, New York, and Rhode Island);
- encourage police to do so (arrest preferred) (New Hampshire and Massachusetts); or
- give police discretion to arrest (Vermont).

Connecticut is the only state among the New England and neighboring states that has a mandatory arrest law without a primary aggressor provision.

ISSUE

Summarize the "primary aggressor" laws in Connecticut and neighboring states. (This report updates OLR Report [2009-R-0460](#).)

SUMMARY

A primary aggressor law generally requires police officers, when considering whether to make an arrest in a domestic violence situation, to attempt to identify the "primary aggressor" by evaluating factors such as the comparative injuries the parties suffered and whether either party:

1. has threatened or is threatening to harm another family or household member,
2. has a history of domestic violence or domestic violence complaints that can be reasonably ascertained, or
3. acted in self-defense.

Primary aggressor provisions are generally companion provisions to mandatory arrest laws. A

mandatory arrest law removes police discretion and requires them to make arrests in cases in which they have probable cause to believe that an act of domestic violence was committed. Connecticut, Maine, New Jersey, New York, and Rhode Island have mandatory arrest laws. In Massachusetts and New Hampshire, arrest

is not mandatory in such situations but is the preferred response. Vermont is a discretionary arrest state, which means that officers may make an arrest in a domestic violence situation but are not required or encouraged to do so.

Domestic violence arrest rates in states with mandatory or preferred arrest laws are generally higher than those in states where primary aggressor provisions give police some discretion. A mandatory or preferred arrest law without a primary aggressor provision generally results in the arrest of both parties (i.e., dual arrest). According to a 2007 [study](#) funded by the U.S. Department of Justice (DOJ), state laws or policies that encourage or require the arrest of the primary aggressor had a dual arrest rate that was a quarter of the rate in states without such laws or policies. The [study](#) pointed out that based on dual arrest data from 2000, Connecticut, which was the only mandatory arrest state without a primary aggressor law at the time, also had the highest dual arrest rate (<http://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf>).

CONNECTICUT

Under Connecticut law, whenever a peace officer determines that a family violence crime has been committed within the officer's jurisdiction, the officer must arrest the alleged perpetrator and charge the person with the appropriate crime. The officer's decision to arrest and charge the perpetrator must not be based on (1) getting the victim's specific consent, (2) the relationship of the parties, or (3) solely on a victim's request.

A peace officer investigating a family violence incident must not threaten the arrest of all parties to discourage any of them from requesting law enforcement intervention. By law, when two or more opposing parties file complaints, the officer must evaluate each complaint separately to determine whether to seek an arrest warrant.

When a peace officer reasonably believes that a person involved in a family violence incident used force as a means of self-defense, the officer is not required to arrest him or her ([CGS § 46b-38b](#)).

NEIGHBORING STATES

Table 1 describes the mandatory arrest and primary aggressor statutes in neighboring states.

Table 1: Mandatory Arrest and Primary Aggressor Statutes in Neighboring States

State (citation)	Mandatory Arrest and Primary Aggressor Statutory Provisions
Maine 19-A Me. Rev. Stat. tit. 19-A § 4012(5)	An enforcement officer must arrest and take into custody an alleged offender when the officer has probable cause to believe that there has been (1) a criminal violation of a court-approved consent agreement or a protection order issued to a family or household member or (2) an aggravated assault against another family or household member.
Massachusetts Mass Gen. Laws ch. 209A § 6	<ul style="list-style-type: none"> • Whenever a law officer has reason to believe that a family or household member has been abused or is in danger of being abused, the officer must use all reasonable means to prevent further abuse. • The officer must arrest anyone he or she witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order, judgment, or similar protection order issued in another jurisdiction. • When there are no such orders or judgments in effect, arrest must be the preferred response whenever an officer witnesses or has probable cause to believe that a person has committed a felony, a misdemeanor involving abuse, or an assault and battery. • The safety of the victim and any involved children must be paramount in any decision to arrest. • Any officer arresting both parties in a domestic violence incident must submit a detailed written report and an incident report setting forth the grounds for the dual arrest. • When investigating a domestic violence incident, an officer must not threaten, suggest, or otherwise indicate that he or she may arrest of all parties to discourage requests for law enforcement intervention by any party.
New Hampshire N.H. Rev. Stat. § 173-B:10	<ul style="list-style-type: none"> • When a peace officer has probable cause to believe that the parties in a domestic violence incident are committing abuse or have abused each other, the officer does not have to arrest both persons but should arrest the person he or she believes to be the primary physical aggressor. • In determining the primary physical aggressor, an officer must consider (1) the intent of the law to protect domestic violence victims, (2) the relative degree of injury or fear inflicted on the parties involved, and (3) any history of domestic abuse between the parties if the officer can reasonably obtain such history.
New Jersey N.J. Stat. § 2C:25-21	<ul style="list-style-type: none"> • When a law enforcement officer finds probable cause to believe that domestic violence was committed, the officer must arrest the alleged perpetrator and sign a criminal complaint if (1) the victim shows signs of injury caused by an act of domestic violence, (2) a warrant is in effect, or (3) probable cause exists to believe that (a) the person has violated a protective order or (b) a weapon was used in the incident. • If none of the above incidents apply, a law enforcement officer may arrest a person, sign a criminal complaint against that person, or both, if probable cause exists to believe that an act of domestic violence was committed. • In determining which party is the victim in a domestic violence incident when both exhibit signs of injury, the officer should consider the comparative extent of the injuries; the history of domestic violence between the parties, if any; and any other relevant factors. • An officer must not arrest or charge a victim with an offense if the victim used reasonable force in self-defense against domestic violence.

Table 1 (continued)

State (citation)	Mandatory Arrest and Primary Aggressor Statutory Provisions
<p>New York N.Y. Crim. Proc. Law § 140.10</p>	<ul style="list-style-type: none"> • A police officer must arrest a person, and may not attempt to reconcile the parties or mediate, when the officer has reasonable cause to believe that the person committed a misdemeanor constituting a family offense against a family or household member, unless the victim requests otherwise. • The officer must not inquire whether the victim seeks the arrest of the perpetrator or threaten to arrest anyone to discourage requests for police intervention. • An officer who has reasonable cause to believe that more than one family or household member has committed such a misdemeanor does not have to arrest both persons. The officer must attempt to identify and arrest the primary physical aggressor after considering (1) the comparative extent of any injuries, (2) any threat of future harm against another party or another family or household member, (3) any such prior history of domestic violence that can be reasonably ascertained, and (4) whether anyone acted in self-defense. • The officer must evaluate each complaint separately to determine who is the primary physical aggressor and must not base the decision to arrest or not arrest on the willingness of a person to testify or otherwise participate in a judicial proceeding.
<p>Rhode Island R.I. Gen.Laws 1956, § 12-29-3</p>	<ul style="list-style-type: none"> • When a law enforcement officer responds to a domestic violence situation and has probable cause to believe that certain crimes have been committed, such as a protective order violation, the officer must arrest and take into custody the alleged perpetrator. • The decision to arrest and charge must not (1) be dependent on the specific consent of the victim, (2) consider the relationship of the parties, or (3) be based solely on the victim's request. • When more than one family or household member involved in a domestic violence incident states a complaint, the officer must investigate each complaint to determine whether there is probable cause to believe a crime was committed. The officer must not dismiss the incident by presuming two-party guilt. • When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer must arrest the person whom he or she believes to be the primary physical aggressor.
<p>Vermont Vt. Crim. Proc., Rule 3(c)(8)</p>	<p>An officer may arrest someone without a warrant if the officer has probable cause to believe the person has committed a misdemeanor that involves an assault against a family member.</p>

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